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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

SHAH, KAMINI S

ART UNIT PAPER NUMBER

2142

DATE MAILED: 07/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/477,880

Applicant(s)

BLAHUT ET AL.

Examiner

Kamini S. Shah

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,5,7-10,12-25 and 27-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7-10,22-25 is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5,12-21 and 27-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Arguments

1. Applicant's arguments with respect to claims 1-2, 4-5,7-32 have been considered but are moot in view of the new ground(s) of rejection.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 4, 12, 18, 20 and 27 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 2 of U.S. Patent No. 6,065,061. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1, 12, 18, and 27 of the present application contains the similar subject matter as claimed in the patent, except the claims in the present application omits the additional features. Similarly, claims 4 and 20 of the present applicant contains the similar subject matter as claim 2 of the patent claim, except omits the additional features. However the omission of limitation in the

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present application is an obvious expedient to the one of the ordinary skill in the art and the remaining elements performs the same function as before. In re Karlson, 136 USPQ 184 (CCPA 1963). Also note Ex parte Rainu, 168 USPQ 375 (Bd. Apo. 1969). Omission of a reference element whose function is not needed would be obvious to one of the ordinary skill in the art.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-2, 4-5, 12-21, 27-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones et al (5,903,558) in view of Atarashi et al (6,173,312).

Jones et al (5,903,558) taught the invention substantially as claimed including apparatus and method for providing Internet communications services over a cable television (CAW) access network to an endpoint having a cable modem via a primary cable communications channel, and also via a separate secondary ISDN communications channel, the system comprising a primary data routing path via cable router (figure 3, element 304) for routing data to the endpoint and a secondary data routing path (figure 3, element 306) for routing data between the endpoint and the Internet or head end which is connected to the Internet (e.g., see columns 4-7) wherein the system monitored the QOS parameters for a threshold and when the threshold

reached the system automatically switched from the primary connection to activating using the secondary connection provided by the ISDN line (col. 4, line 50 et seq; col. 5, line 5 et seq; col. 6, line 30 et seq; and col. 8, line 37 et seq). Jones et al did not specify due to the scope of their teaching that their system used routing table for switching from the primary line to the secondary line, or that the primary line and secondary lines used different IP numbers but they stated that it would be obvious to one of ordinary skill in the art that the elements of the data processing system including the router were conventional and operated in conventional manner. Jones et al further stated that routers shown in figures 2-3 use the components depicted in figure 4 (e.g., see column Page 4 6 line 2 et seq and col. 8, line 19 et seq.) Figures 2-3 show ISDN/ETHERNET router. Obviously Ethernet router is a data router and operates according to the TCP/IP standards. Column 7, line 63 seq teaches using ping test. It is well known to those one skill in the networking art that the ping test is used as part of the TCP/IP protocol. Routers that connect to the Internet also use TCP/IP protocol and TCP/IP protocol uses IP numbers for routing. Atarashi et al (6,173,312) taught server switching upon failure to a backup server from a working server using the routers (see Figure 9 and related information in columns 12-13) to change the routing table and mapping (col. 13, lines 25-40.) It would have been obvious to one of ordinary skill in the networking art at the time of the invention to combine the teachings of Jones et al and Atarashi et al because Atarashi et al routing table and routing table changing and mapping teachings would improve Jones et al switching to an alternative backup route or address for increased reliability. Also it should be noted that the router switches to an alternate route of the

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alternate backup server from the working server when the working server's service is interrupted (col. 13.)

Jones et al taught throughout the patent switching from one type of connection to another type of connection when user defined parameters indicate that one type of the connection fails to meet the parameters (col. 5, line 5 et seq; col. 6, line 38 et seq and col. 8, lines 37-64.) Jones et al system included two different interfaces for routing data for two different types of connections, e.g., shared and unshared, see figures 2-3.

Obviously, in the case of Internet and TCP/IP protocol, the interfaces would use IP numbers to identify the interface. In the case of other protocols, the interfaces would use identifiers or addresses whatever that protocols specifies (e.g., see claimed CM identifier.) It would have been obvious to one of ordinary skill in the networking art at the time of the invention that the claimed invention differed from the teachings of Jones et al only by a degree, e.g., using the thresholds of the QOS to monitor health or state or congestion of the link and when the set condition are reached switch using the secondary line to provide a fault safe or redundant system or to provide better QOS to the end user. Other claimed features are all obvious variations of the well known features of cable modem and Internet communication. For example, claims recite detecting service interruption in order to switch to another connection. But this is obvious variations of detecting QOS parameters defines by the user in order to switch from shared connection type of Jones et al to unshared connection type. Jones et al further specified that other parameters other than the examples taught by them could be used (col. 5, line 5 et seq.) Applicant's idea of providing a backup line in case of

problem with the main communications line is not new and Jones et al teachings is a testimony for that.

Allowable Subject Matter

5. Claims 7-10, 22-25 is allowable over prior art.
6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kamini S. Shah whose telephone number is 571-272-2279. The examiner can normally be reached on IFP.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew B. Caldwell can be reached on 571-272-3868. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kamini S Shah
Primary Examiner
Art Unit 2142

kss